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## POWERS OF CONTEST COMMITTEES.

(ADV.)

The opinion of the Court of Appeals of Kentucky, published below, is in line with former decisions of that court and should put at rest any doubt which may have heretofore existed as to the power of county or district party committees when sitting as boards of contest. The substance of this opinion is that the decision of the committee in contests over nominations, whether the decision be right or wrong, is final, and that the courts have no power to set aside or in any manner interfere with it; that the matter decided by the committee is political rather than legal, and for this reason the courts have no jurisdiction over it; and this is true whether the committee bases its ruling on a question of law or one of fact. This opinion of the Court of Appeals would seem to settle the contest between Baughman and McCarty in favor of the latter, as it is in direct conflict with the decision of Judge Bell. It is fair, however, to Judge Bell to say that the opinion of the Court of Appeals was not rendered until a few days after Judge Bell's decision.

Court of Appeals of Kentucky.

The Democratic Executive Committee of Harrison County, Ky., &c., Appellants.

Vs.

James A. Dougherty, Appellee.  
Appeal from Harrison Circuit Court.  
Opinion of the Court by Judge Barker, Reversing.

In the Summer of 1908 the Democratic Executive Committee of Harrison County duly and regularly called a primary election, for the nomination of county officers, to be held on the 14th day of November, 1908. At this primary election, the appellant, E. F. Mason, the appellee, James A. Dougherty, and George T. Renaker were candidates for the nomination of the party for the office of clerk of the Harrison circuit court. After the primary election was held the Executive Committee met and canvassed the returns, and, having found that E. F. Mason received 40 more votes than either of his opponents, they issued to him a certificate of nomination.

Afterwards on the 18th day of November, 1908, the appellee, James A. Dougherty, caused to be served upon the Committee and appellant Mason a notice of contest. The Committee was called together after receiving this notice on the 20th day of November, and formulated the following rules for determining the contest:

"Rules for determining the contest between Jas. A. Dougherty contestant, for the nomination of the Democratic party and E. F. Mason, contestee, for the office of clerk of the Harrison circuit court.

"Resolved by the Harrison County Democratic Executive Committee, in meeting assembled, that the rule for determining the contest between Jas. A. Dougherty, contestant, and E. F. Mason, contestee, be as follows:

"All the petition of contestant Dougherty is hereby dismissed, except that portion relative to the accuracy of the counting of the votes: This Committee will meet on the 15th day of December, 1908, and hear proof to be offered by contestant and then determine whether or not said proof as then offered will warrant this Committee in opening the said ballot boxes and recount the ballots as claimed in the petition."

On the 15th day of December the Committee met and adjourned to the 18th day of December, on which date it again met pursuant to the order of adjournment, and they then dismissed the appellee's petition and contest. Whereupon he instituted this action for a mandatory injunction requiring the Committee to hear and determine his contest for the nomination. Upon final trial the chancellor held that the Committee had not heard and determined the contest, and entered a judgment in accordance with the prayer of the petition, requiring them so to do. From this judgment the Committee and E. F. Mason have prosecuted this appeal.

Section 1563, of the Kentucky Statutes, concerning contests in primary elections, in so far as pertinent hereto, is as follows:

"The duly authorized and constituted committee or governing authority in the county or district in which a primary election may be held hereunder is hereby empowered to count the votes received by all candidates in such primary elections, and to declare the candidate or candidates, in cases where candidates for more than one office are to be nominated, receiving the highest number of votes the nominee of such political party for the office for which he was voted for at such primary election. In all cases of a tie vote or contest, the committee or governing authority of the political party holding

such primary election shall have the power to hear and determine such contest, and decide who shall be entitled to the nomination. The proceedings in such cases shall be in such form and manner as the committee or governing authority shall determine upon."

It is conceded by the parties to this litigation that the only question to be determined upon this appeal is whether or not the Committee heard and determined the contest between Mason and Dougherty. It is also conceded that the courts have no power to correct the decision of the Committee in such a matter, however erroneous it may be. The only power which the courts have is to force the Committee to decide, but they can not review their decision. The case of Beasley vs. Adams, 118 Ky., 695, for all practical purposes involved the questions we have here. In the opinion, after quoting from section 1,563, Ky. Statutes, the following: "In all cases of a tie vote or contest, the committee or governing authority of the political party holding such primary election, shall have the power to hear and determine such contest and decide who shall be entitled to the nomination. The proceedings in such cases shall be in such form and manner as the committee or governing power shall determine upon."—We said:

"This makes the decision of the contest committee final. The language that the committee shall have the power to hear and determine such contests, and decide who shall be entitled to the nomination, precludes the idea that there shall be an appeal. The entire matter is referred to the governing authority of the party for its decision, and this is eminently proper, as the question is purely political. This construction is consonant with sound reason, and any other would violate the elementary canon of statutory construction that the law should not be so interpreted as to make it vain or illusory. Primary elections are held for the purpose of nominating party candidates for the regular State election thereafter to be held for the selection by the whole people of their official servants. The right of political parties to so select their nominees has been deemed sufficiently important to safeguard the official machinery by which the elections are held with the protection of the law; but if where there are contests over the nominations, the defeated candidates may appeal to the courts, it would necessarily follow that the State election would be held before the contest could be settled, and the political party whose nominees were thus involved in litigation would have no place on the ticket for the offices in question, and the statute rendered abortive." And again:

"In the case at bar the governing authority of the party has acted upon the sufficiency of appellant's grounds of contest, and rendered a decision adverse to him. This judgment can not be reviewed by us. Courts will often require officials to act in matters, the decision of which is exclusively within their discretion, when they refuse to do so, although they will not review the decision when made, however erroneous it may be."

Applying the principles thus enunciated, we have no difficulty in reaching the conclusion that the Committee heard and determined the matter of contest between the rival candidates. In the notice of contest several grounds were relied upon by the contestant; these were all dismissed by the Committee, except that one which alleges that the contestant in reality received more votes than the contestee. Whether this decision was right or wrong it is not within our province to determine. It was within the jurisdiction of the Committee to pass upon the sufficiency of the grounds of contest, and their decision, that certain grounds relied upon were insufficient, was in principle the same as if a demurrer had been filed to these grounds and sustained by the Committee. This decision left only one question to be determined: Which of the two candidates received the greater number of legal votes? As to this ground the contestant seems to have relied in the main upon his right to a recount of the ballots in the boxes which had been preserved, and, so far as this record shows to the contrary, had not been tampered with in any way. The contestee objected to a recount of the ballots, and relied upon a rule of the Democratic party, formulated at its last convention, which authorized a recount of the ballots provided this is requested by ten per cent of the voters voting at any election precinct, the request to be shown by a petition in writing signed within ten days after the election. It was the theory of the contestee that the contestant did not show himself entitled to a recount of the ballots because he had failed to obtain a petition of ten per cent of the voters participating in the election within ten days next after the election. The contestant did obtain such a petition, but not within the time prescribed

by the rule. The Committee, having heard argument upon this question, decided that under the rule the petition must have been obtained within 10 days after the election, and, this not having been done, a recount of the ballots could not be had. This was certainly a determination of the legal question based upon the party's rules, and binds the contestant and all others concerned in the contest. The contestant not having produced any other evidence showing that he was entitled to the nomination, the Committee dismissed the whole procedure, and it is of this action that appellee complains.

We are of opinion that the learned trial judge erred in awarding the mandamus against the Committee. We think the questions of law which arose upon the pleadings in the contest before the Committee were alone within their jurisdiction to determine; and they having determined them adversely to the contestant, he can not have their decision reviewed by the courts. The burden of proof was upon the contestant, and he having failed to adduce any evidence which tended to overthrow the certificate of nomination which had been awarded to the contestee, the Committee had a right to dismiss the procedure.

For these reasons, the judgement is reversed, with directions to dismiss the petition.

## NEWS NOTES.

It was so hot in Colorado the first of the week that railroad rails were twisted by the sun's rays and a wreck resulted.

Fire destroyed a tobacco barn containing over 6,000 pounds of tobacco owned by R. A. Vincent, of Barren county.

State Senator Israel W. Durham, one of the Republican leaders of Philadelphia and prominent in State politics, died suddenly at his Summer residence in Atlantic City.

The Indiana Refining Company's oil tanks at Torrent, were destroyed by lightning. The blazing oil set fire to surrounding buildings and the loss is estimated at \$50,000.

The preparation of a bill to exclude Negroes from employment as firemen and trainmen in Georgia was begun by a committee representing the firemen and trainmen of the Georgia Railroad.

The Woodliff murder is a closed case as far as the Maryland authorities are concerned. The State's Attorney said he was convinced that Eastman alone committed the crime, though four members of the Coroner's jury thought there were grounds for believing that others were implicated.

An increase of 344 in the total of railroad casualties, but a decrease of 65 in the total of persons killed, as compared with the figures for the corresponding quarter last year is shown for the months of January, February and March, 1909, by Accident Bulletin No. 31, issued by the Interstate Commerce Commission. During the months named 663 persons were killed.

## Resolutions of Respect.

At a meeting of the officers of the Hustonville Christian church the following resolutions were adopted:

Whereas, in the Providence of God our dear brother and fellow-officer, Thomas J. Robinson, has been called suddenly hence,

Resolved, that we, the board of officers of the Hustonville Christian church, hereby express our deep sense of loss, and our sincere regret because of his departure. He was ever faithful in his duties as a citizen, as a member of the church and as an officer.

Resolved, That we hereby extend our deep sympathy to his dear, faithful wife and other relatives in this, their great affliction.

Resolved, That a copy of these resolutions be spread upon our minutes and a copy furnished the family and published in our county paper.

W. S. Willis, chairman, V. B. Morse, secretary pro tem.

Don't drug the Stomach, or stimulate the Heart or Kidneys. That is wrong. It is the weak nerves that are crying out for help. Vitalize these weak inside controlling nerves with Dr. Shoop's Restorative, and see how quickly good health will come to you again. Test it and see! Sold by Penny's Drug Store.

Broughton Brandenburg was acquitted at New York on the charge of grand larceny, growing out of the sale to the New York Times of an article purporting to have been signed by Grover Cleveland. He was at once arrested on a charge of kidnaping his step-son in St. Louis.

The cleverest imitation of real Coffee ever yet made is Dr. Shoop's Health Coffee. It is fine in flavor and is made in just one minute. No tedious 20 or 30 minutes boiling. Made from pure parched grains, malt, nuts, etc. Sample free. Penny's Drug Store.

## HUSTONVILLE.

BIG FIRE SALE.—Goods at half cost. Within the next two weeks we mean to sell every thing that was saved from the fire. Come early and get big bargains. Hats, skirts and notions. Miss Cora Lipps & Sister, Hustonville.

Every member of the Hustonville Christian church is urged to be present next Lord's Day, July 4th, to hear the reports of the year's work and the plans for the future. Come in time for the teaching service of the church. W. S. Willis, pastor.

I am open for business in the Newton building. Am replenishing my stock, and will appreciate a continuance of the patronage you have given me in past. Have some goods with package soiled, but contents as good as ever, which you can buy cheap. Kindly come in and settle your account. I need money. C. W. Adams.

T. J. Robinson died suddenly at his home here on the 18th inst. about 6 A. M., caused by an attack of "Angina Pectoris." Several members of this immediate family had died from the same cause and he had felt for a long time that he would pass off in the same way. Mr. R. was 66 years old and appeared to be a man of active, vigorous physical health. He had lived here for many years, removing from Lancaster with his brother, Jacob, to the farm now owned by Mr. Stevens, a short distance from town. He was well known to every resident of the town and to the people of the West End of Lincoln county and by his modest demeanor and affable bearing, won and held their respect.

By close attention to business and economic habits he accumulated an estate estimated at \$75,000, chiefly in cash and bank stocks. He was very conservative in all his business transactions but always scrupulously honest. He dispensed charity in a way that always did good, but did it in such a way that the outside world knew but little about it. Several young men and women too, were beneficiaries of his, while striving for an education. He rarely ever spoke of these acts to his most intimate friends even, but he realized the fact that he was doing good and his reward would come in due time.

In all questions, political or otherwise, he could invariably be found on the moral, conservative side. He was vice president of the National Bank here and its largest stock holder. He had held this position since the organization of the institution and was one of its most watchful and conservative directors. The bank loses one of its best men and his advice will be missed by all those associated with him. He was married about 30 years ago to Miss Minnie Kaufman, of this place, who survives him. His married life was a happy one, as the entire community well knows. He had been a faithful member of the Christian church since early manhood and did his part faithfully and well.

His associates and the community at large will miss him. E. A.

## Men Past Fifty in Danger.

Men past middle life have found comfort and relief in Foley's Kidney Remedy. L. E. Morris, Dexter, Ky., writes: "Up to a year ago my father suffered from kidney and bladder trouble and several physicians pronounced it enlargement of the prostate gland and advised an operation. On account of his age we were afraid he could not stand it and I recommended Foley's Kidney Remedy, and the first bottle relieved him, and after taking the second bottle he was no longer troubled with this complaint. New Stanford Drug Co.

It would seem, from the continued howling of some of the metropolitan newspaper advocates of the "business interests," that the only thing the people of Kentucky want to invest in is booze. But they will wake up to the fact one of these days of the fallaciousness of such a conception.—Advocate

## Could Not Be Better.

No one has ever made a salve, ointment, lotion or balm to compare with Bucklen's Arnica Salve. Its the one perfect healer of Cuts, Corns, Burns, Bruises, Sores, Scalds, Boils, Ulcers, Eczema, Salt Rheum, For Sore Eyes, Cold Sores, Chapped Hands its supreme. Infallible for Piles. Only 25c at Penny's Drug Store.

Fighting in a swamp with a cheap, small-caliber pistol, Robert Jenkins, a Negro, accused of murder, held at bay a Sheriff's posse near Adrian, Ga., until he had wounded two of them, and then exclaiming, "Lord, have mercy on my soul," he dropped dead, riddled with rifle and pistol balls.

A tickling or dry cough can be quickly loosened with Dr. Shoop's Cough Remedy. No opium, no chloroform, nothing unsafe or harsh. Sold by Penny's Drug Store.

There were 10 deaths from heat in Chicago Monday.

# Summer Styles

## Monarch Shirts

H. & I.

## Linen Collars.

## GUARANTEED HOSIERY

## In New Colors.

## Cummins & Wearen,

STANFORD, KENTUCKY.

BEGINNING JULY 1st

## The C. & O.

WILL SELL ROUND - TRIP TICKETS

—TO—

	All Rail	Norfolk and O. D. S. Co.
New York City.....	\$28 00	\$30 00
Atlantic City.....	25 50	
Via Norfolk and O. D. S. S. & N. Y.		
Ashbury Park, N. J.....	23 80	30 00
Long Branch, N. J.....	23 80	30 00
Ocean Grove, N. J.....	23 80	30 00
Spring Grove, N. Y.....	23 80	30 00
Sea Girt, N. J.....	23 80	30 00
Cape May, N. J.....	26 15	
Ocean City, N. J.....	25 80	

GOOD 30 DAYS. LIBERAL STOP-OVERS

On sale every day. Round trip Tickets New York and Boston, rail and water, going one route and returning another. Good 30 days; stop-overs allowed.

Round-trip tickets to all mountain and summer resorts. Good Oct. 31.

Old Point Comfort and return, July 27 and August 21. Tickets good

15 days. Stop over allowed on return trip

Atlantic City and return, August 19. Tickets good 15 days. Stop-

over allowed on return trip at all authorized points

For full information call on or address

Ticket office Phoenix Hotel.

William M. Yen, City Ticket Agent.

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## Use Arnold's Hand-Made Buggies.

There are plenty cheaper buggies but there are none better. Buggy painting, first-class work, \$10; phaetons, \$12; surreys, \$14 and up, according to the size. Per set, buggy steel tires, best quality, at \$3.50. Buggy tops re-covered in 30 ounce rubber at \$8. Buggies re-covered and relined at \$10. Buggies re-covered in leather and relined for \$25. Rubber tires, the best on the market and the lowest prices, Goodyear and Kelley, at \$14. Best Goodrich at \$16. We solicit your trade.

R. M. ARNOLD, DANVILLE, KY.

## RURAL TELEPHONES.

MR. FARMER: Make your home as modern for your family as a city residence, and place yourself in a position to get the latest market quotations at any time. This can be accomplished by means of our telephone service, which you and your neighbors can get for a sum that is small compared with the benefits received. Call or address our nearest office or write direct to headquarters, Nashville, Tenn., for information regarding our special "Farmers' Line" rate. If you are not at present enjoying telephone service, we can immediately interest you. Our lines cover the States of Kentucky, Tennessee, Mississippi, Louisiana and the Southern portion of Indiana and Illinois.

EAST TENNESSEE TEL. & TEL. CO.

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